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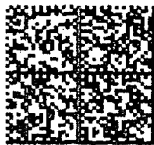
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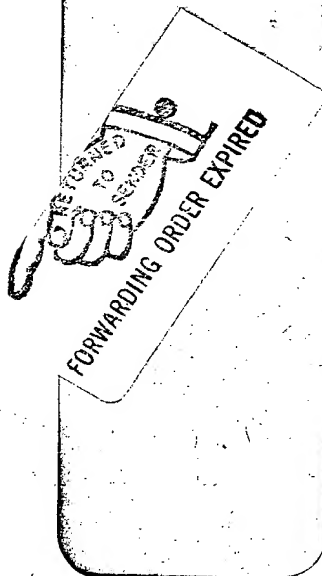
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/195,791	11/17/1998	MOHAMED K. DIAB	MASIMO.7CP1C	4687

7590 09/19/2005

Knobbe Martens Olson & Bear  
620 Newport Center Drive  
Sixteenth Floor  
Newport Beach, CA 92660

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EXAMINER

WINAKUR, ERIC FRANK

ART UNIT PAPER NUMBER

3736

DATE MAILED: 09/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/195,791	DIAB ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Eric F. Winakur	3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 15-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-26 is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>6/20 &amp; 8/31/05</u> .  | 6) <input type="checkbox"/> Other: ____                                     |

1. Applicant's Information Disclosure Statements filed 20 June 2005 and 31 August 2005 have been reviewed. The claims remain allowable over the prior art. The prior art teaches methods and apparatus for measuring saturation of a blood constituent in a patient including irradiating a patient with two wavelengths and detecting light that has passed through the patient, wherein the detected light includes a motion component. However, the prior art does not teach or suggest an apparatus or method for determining the saturation by generating a plurality of data packets from detected optical measurement signals at two wavelengths, and using a mathematical relationship relating first and second portions of the measured signals at both wavelengths and a ratio of the first portion of the signals at both wavelengths to generate at least first and second functions from the data packets, wherein the first and second functions have a final solution value indicative of the ratio.

2. This application is in condition for allowance except for the following formal matters:

While the potential interference with USPN 5,687,722 remains relevant to prosecution of the instant application, Applicant is hereby advised that new rules (see 37 CFR § 41.202 - 41.208, effective 13 September 2004) govern interference proceedings.

Applicant's previous submissions including the Request for Interference filed 17 November 1998 are noted. Applicant is requested to review their previous submissions and provide any additional submissions they deem necessary to conform with the new rules in response to this action [see in particular 37 CFR § 41.202 (a)(1)-(6) and 37 CFR

§ 41.202 (d)(1)-(2) and (e)(1)-(2)]. At a minimum, Applicant must indicate where the previous filings meet the new rules; however, if additional submissions are necessary to meet some requirements of the new rules, it is preferable for Applicant to submit all of the required information in a single filing.

Applicant's attention is drawn to 37 CFR § 41.202(d)(1)-(2) and 37 CFR § 41.204. Submissions provided after the interference has been forwarded to the board may not be considered timely.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.


A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric F. Winakur whose telephone number is 571/272-4736. The examiner can normally be reached on M-Th, 7:30-5; alternate Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eleni Mantis-Mercader can be reached on 571/272-4740. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3736

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eric F Winakur  
Primary Examiner  
Art Unit 3736

16 September 2005



PTO/SB/08 Equivalent

**INFORMATION DISCLOSURE  
STATEMENT BY APPLICANT**

(Multiple sheets used when necessary)

SHEET 1 OF 14

Application No.	09/195,791
Filing Date	November 17, 1998
First Named Inventor	Mohamed K. Diab
Art Unit	3736
Examiner	Eric F. Winakur
Attorney Docket No.	MASIMO.7CP1C5

**U.S. PATENT DOCUMENTS**

Examiner Initials	Cite No.	Document Number Number - Kind Code (if known) Example: 1,234,567 B1	Publication Date MM-DD-YYYY	Name of Patentee or Applicant	Pages, Columns, Lines Where Relevant Passages or Relevant Figures Appear
E	1	Re. 35,122	12/19/1995	Corenman et al.	
2	2	3,638,640	02/01/1992	Shaw	
2	3	4,038,536	07/26/1977	Feintuch	
E	4	4,157,708	06/12/1979	Imura	
E	5	4,458,691	07/10/1984	Netravali	
E	6	<del>4,537,200</del>	<del>08/27/1995</del>	<del>Widrow</del>	
E	7	4,582,068	04/15/1986	Phillipps et al.	
	8	B1 4,653,498	04/18/1989	New, Jr. et al.	
	9	4,653,498	03/31/1987	New, Jr. et al.	
	10	4,667,680	05/26/1987	Ellis	
	11	4,714,341	12/22/1987	Hamaguri et al.	
	12	4,751,931	06/21/1988	Briller et al.	
E	13	4,793,361	12/27/1988	DuFault	
E	14	4,799,486	01/24/1989	DuFault	
E	15	<del>4,799,493</del>	<del>01/24/1989</del>	<del>DuFault</del>	
E	16	4,800,885	01/31/1989	Johnson	
E	17	4,802,486	02/07/1989	Goodman et al.	
E	18	<del>4,863,265</del>	<del>09/06/1989</del>	<del>Flower et al.</del>	
E	19	<del>4,867,571</del>	<del>09/19/1989</del>	<del>Frick et al.</del>	
E	20	<del>4,869,254</del>	<del>09/26/1989</del>	<del>Stone et al.</del>	
E	21	<del>4,883,353</del>	<del>11/28/1989</del>	<del>Hauerman et al.</del>	
E	22	<del>4,911,167</del>	<del>03/27/1990</del>	<del>Corenman et al.</del>	
E	23	<del>4,928,692</del>	<del>05/29/1990</del>	<del>Goodman et al.</del>	
E	24	4,934,372	6/19/1990	Corenman et al.	
E	25	4,949,710	08/21/1990	Dorsett et al.	
E	26	4,951,680	08/28/1990	Kirk et al.	
E	27	<del>4,955,379</del>	<del>09/11/1990</del>	<del>Hall</del>	
E	28	<del>4,960,126</del>	<del>10/02/1990</del>	<del>Conlon et al.</del>	
E	29	4,967,571	11/06/1960	Sporri	

Examiner Signature

Date Considered

9/14/05

\*Examiner: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

T<sup>1</sup> - Place a check mark in this area when an English language Translation is attached.

<b>INFORMATION DISCLOSURE STATEMENT BY APPLICANT</b>  <i>(Multiple sheets used when necessary)</i>	Application No.	09/195,791
	Filing Date	November 17, 1998
	First Named Inventor	Mohamed K. Diab
	Art Unit	3736
SHEET 2 OF 14		Attorney Docket No. MASIMO.7CP1C5

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Σ	30	5,036,857	08/06/1991	Semmlow et al.	
	31	5,040,201	08/13/1991	Slump	
	32	5,041,187	08/20/1991	Hink et al.	
	33	5,054,495	10/08/1991	Uemura et al.	
	34	5,243,993	09/14/1993	Alexander et al.	
	35	5,379,774	01/10/1995	Nishimura et al.	
	36	5,494,032	02/27/1996	Robinson et al.	
	37	5,853,364	12/29/1998	Baker, Jr. et al.	
	38	6,083,172	07/04/2000	Baker, Jr. et al.	
	39	6,411,833 B1	06/25/2002	Baker, Jr. et al.	

## FOREIGN PATENT DOCUMENTS

Examiner Initials	Cite No.	Foreign Patent Document Country Code-Number-Kind Code Example: JP 1234567 A1	Publication Date MM-DD-YYYY	Name of Patentee or Applicant	Pages, Columns, Lines Where Relevant Passages or Relevant Figures Appear	T <sup>1</sup>
Σ	40	EP 0 359 206 B1	03/29/1995	Kanda		
Σ	41	JP-A-63-171539	07/15/1988	(In Japanese)		
	<del>42</del>	<del>WO 92/46055</del>	<del>09/17/1992</del>	<del>Diab et al.</del>		
Σ	43	WO 97/00041	01/03/1997	Yorkey		
Σ	44	WO 98/42249	10/01/1998	Baker et al.		
Σ	45	WO 98/43071	10/01/1998	Baker et al.		

## NON PATENT LITERATURE DOCUMENTS

Examiner Initials	Cite No.	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T <sup>1</sup>
Σ	46	U.S. District Court, Central District of California (Western Division - Los Angeles) Civil Docket for Case #: 2:00-cv-06506-MRP-AJW.	
Σ	47	U.S. District Court, Central District of California (Western Division - Los Angeles) Civil Docket for Case #: 2:01-cv-07292-MRP-AJW.	
Σ	48	U.S. District Court, Central District of California (Western Division - Los Angeles) Civil Docket for Case #: 2:01-cv-07293-MRP-AJW.	
Σ	49	Complaint for Patent Infringement of US. Patent Nos. 6,206,830 B1 and 6,157,850; Demand for Jury Trial, dated 7/6/01.	

Examiner Signature

Σ

Date Considered

9/14/05

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<b>INFORMATION DISCLOSURE STATEMENT BY APPLICANT</b>	Application No.	09/195,791
	Filing Date	November 17, 1998
	First Named Inventor	Mohamed K. Diab
	Art Unit	3736
(Multiple sheets used when necessary)	Examiner	Eric F. Winakur
SHEET 3 OF 14	Attorney Docket No.	MASIMO.7CP1C5



NON PATENT LITERATURE DOCUMENTS			
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	50	First Amended Complaint for Patent Infringement of U.S. Patent Nos. 6,206,830 B1, 6,157,850 and 6,263,222 B1; Demand for Jury Trial, dated 7/18/01.	
	51	Nellcor's and Mallinckrodt's Answer to First Amended Complaint, dated 8/20/01.	
	52	Nellcor's and Mallinckrodt's Amended and Supplemental Answer and Counterclaims to Masimo Corporation's First Amended Complaint in Case No. CV-01-7292 MRP (AJWx), dated 5/31/02.	
	53	Masimo's Reply to Nellcor's and Mallinckrodt's Amended and Supplemental Answer and Counterclaims to Masimo's First Amended Complaint in Case No. CV-01-7292 MRP (AJWx), dated 8/27/02.	
	54	Complaint for Patent Infringement of US. Patent Nos. 4,653,498, 5,078,136 and Re. 36,000, dated 11/17/99.	
	55	Defendant Masimo Corp.'s Answer and Counterclaims, dated 12/8/99.	
	56	Mallinckrodt's and Nellcor's Reply to Counterclaims of Masimo; Demand for Jury Trial, dated 12/28/99.	
	57	Mallinckrodt's and Nellcor's Amendment Complaint for Patent Infringement of U.S. Patent Nos. 4,653,498, 5,078,136, Re. 35,122 and Re. 36,000; Demand for Jury Trial, dated 1/24/00.	
	58	Defendant Masimo Corp.'s Amended Answer and Counterclaims, dated 2/7/00.	
	59	Nellcor's Reply to Amended Counterclaims of Masimo Corporation, dated 2/22/00.	
	60	Mallinckrodt's and Nellcor's Second Amended Complaint for Patent Infringement of U.S. Patent Nos. 4,621,643, 4,653,498, 4,700,708, 5,078,247, Re. 35,122 and Re. 36,000; Demand for Jury Trial, dated 10/13/00.	
	61	Masimo Corp.'s Answer to Plaintiffs' Second Amended Complaint and Counterclaims; Demand for Jury Trial, dated 11/2/00.	
	62	Mallinckrodt Inc.'s and Nellcor Puritan Bennett, Inc.'s Reply to Counterclaims of Masimo Corporation; Demand for Jury Trial, dated 12/1/00.	
	63	Nellcor's and Mallinckrodt's First Amended and Supplemental Reply and Counterclaims to Counterclaims of Masimo Corporation, dated 5/31/02.	
	64	Masimo's Reply to Nellcor's and Mallinckrodt's First Amended and Supplemental Reply and Counterclaims to Counterclaims of Masimo, dated 8/27/02.	
	65	Nellcor's Third Amended Complaint for Patent Infringement of U.S. Patent Nos. 4,621,643, 4,653,498, 4,700,708, 5,078,136, 5,807,247 and Re. 36,000; Demand for Jury Trial, dated 7/31/02.	
	66	Masimo's Answer to Counterclaims to Nellcor's Third Amended Complaint for Patent Infringement; Demand for Jury Trial, dated 8/27/02.	
	67	Complaint for Patent Infringement of U.S. Patent No. 5,490,505; Demand for Jury Trial, dated 10/8/99, entered 10/15/99.	


Examiner Signature	Date Considered 9/14/05
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	68	Mallinckrodt's and Nellcor's Answer and Counterclaims, dated 11/1/99.	
	69	Plaintiff's Masimo Corp.'s Reply to Defendants' Counterclaims, dated 11/22/99.	
	70	Amended Complaint for Patent Infringement of U.S. Patent Nos. 5,490,505 and 6,036,642; Demand for Jury Trial, dated 4/5/00, entered 4/18/00.	
	71	Answer to First Amended Complaint and Amended Counterclaim; Demand for Jury Trial, dated 5/1/00.	
	72	Plaintiff Masimo Corp.'s Reply to Defendants' First Amended Counterclaims; Demand for Jury Trial, dated 5/18/00.	
	73	Nellcor's and Mallinckrodt's Amended and Supplemental Answer to Counterclaims to Masimo Corporation's First Amended Complaint in Case No. CV-01-7293-MRP (AJWx), dated 5/31/02.	
	74	Masimo's Reply to Nellcor's and Mallinckrodt's Amended and Supplemental Answer and Counterclaims to Masimo's First Amended Complaint in Case No. -01-7293 MRP (AJWx), dated 8/27/02.	
	75	Memorandum of Decision re: Mallinckrodt and Nellcor's Motion for Summary Judgment of Invalidity of Claim 19 of U.S. Patent No. 5,490,505.	
	76	Minute Order 1) Granting Defendants' Motion for Summary Judgment of Non-Infringement of '642 Patent; 2) Denying Plaintiff's Motion for Preliminary Injunction; 3) Granting Plaintiff's Ex Parte Application to Strike Defendants' Supplemental Declaration, dated 10/4/00, entered 10/6/00.	
	77	Defendant's Mallinckrodt's and Nellcor's Statement of Uncontroverted Facts and Conclusions of Law.	
	78	Findings of Fact and Conclusions of Law Regarding Masimo's Motion for Preliminary Injunction.	
	79	Judgement in <i>Masimo Corp. v. Mallinckrodt Inc.</i> , Court of Appeals for the Federal Circuit No. 01-1038, dated 8/8/01, entered 10/17/01.	
	80	Memorandum of Decision and Order Re: 1) Claim Construction; 2) Motion to Strike Masimo's Declarations, entered 2/27/03.	
	81	Final Judgment, entered 8/6/04.	
	82	Memorandum of Decision and Order Re: Post-Trial Motions, dated 7/12/04, entered 7/14/04.	
	83	Memorandum and Points and Authorities in Support of Mallinckrodt's and Nellcor's Motion for Summary Judgment of Invalidity of Claim 19 of U.S. Patent No. 5,490,505, dated 8/30/00.	
	84	Masimo's Opposition to Defendants' Motion for Summary Judgment for Summary Judgment of Invalidity of Claim 19 of U.S. Patent No. 5,490,505, dated 9/21/00.	
	85	Reply Memorandum and Points and Authorities in Support of Mallinckrodt's and Nellcor's Motion for Summary Judgment of Invalidity of U.S. Patent No. 5,490,505, dated 10/13/00.	

Examiner Signature 	Date Considered 9/14/05
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	Attorney Docket No.	MASIMO.7CP1C5

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	86	Brief of Plaintiff-Appellant Masimo Corporation, dated 12/8/00.	
	87	Non-Confidential Brief of Defendants-Cross Appellants Mallinckrodt Inc and Nellcor Puritan Bennett, Inc., dated 1/22/01.	
	88	Nonconfidential Reply Brief of Plaintiff-Appellant Masimo Corporation, dated 2/6/01.	
	89	Masimo Corp.'s Initial Claim Construction on Its Asserted Patents, dated 6/21/02.	
	90	Declaration of Jack Goldberg in Support of Masimo Corp.'s Initial Claim Construction on Its Asserted Patents, dated 6/21/02.	
	91	Notice of Errata and Corrected Appendices for Mallinckrodt's and Nellcor's Statement Regarding Disputed Claim Terms of the Asserted Patents, dated 9/12/02 (Final Version).	
	92	Expert Declaration of Robert T. Stone Re: Masimo's Patent-In-Suit, dated 7/18/02.	
	93	Masimo Corp.'s Opening Memorandum of Claim Construction, dated 9/16/02.	
	94	Nellcor's and Mallinckrodt's Opening Claim Construction Brief on the Patent-In-Suit, dated 9/16/02.	
	95	Masimo Corp.'s Reply Memorandum on Claim Construction, dated 10/18/02.	
	96	Nellcor's and Mallinckrodt's Reply Claim Construction Brief on the Patents-In-Suit, dated 10/18/02.	
	97	Nellcor's Trial Brief on Indefiniteness, dated 3/23/04.	
	98	Masimo's Trial Brief of Indefiniteness, dated 3/24/04.	
	99	Nellcor's Trial Brief re Inequitable Conduct, dated 3/23/04.	
	100	Masimo's Trial Brief regarding Inequitable Conduct, dated 3/24/04.	
	101	Nellcor's Memorandum of Points and Authorities in Support of: (1) Argument on Bench Trial and (2) Renewed Motion for Judgment as a Matter of Law or Alternatively, a New Trial.	
	102	Masimo's Memorandum of Points and Authorities in Opposition to Nellcor's (1) Argument on Bench Trial and (2) Renewed Motion for Judgment as a Matter of Law or for a New Trial.	
	103	Memorandum of Points and Authorities in Support of Masimo's Motion for (1) Judgment as a Matter of Law that Nellcor Literally Infringes Claim 17 of the '850 Patent and Claims 16 and 23 of the '222 Patent; (2) A Permanent Injunction; (3) An Accounting for Infringing Sales Occurring in 2004; and (4) Prejudgment Interest.	

Examiner Signature	Date Considered 9/14/05
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SHEET 6 OF 14	Attorney Docket No.	MASIMO.7CP1C5

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Examiner Initials	Cite No.	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T <sup>1</sup>
✓	104	Nellcor's Opposition to Masimo's Motion for Judgment as a Matter of Law and Other Post-Trial Issues.	
	105	Brief of Defendant-Appellant Masimo Corporation.	
	106	Confidential Brief of Plaintiffs-Cross Appellants Mallinckrodt, Inc. and Nellcor Puritan Bennett, Inc.	
	107	Letter to Mr. Hornbaly, Clerk of Fed. Cir., indicating that the parties agreed that the Confidential Brief (Ref. No. 106) do not need to remain confidential.	
	108	Reply Brief of Defendant-Appellant Masimo Corporation.	
	109	Reply Brief of Plaintiffs-Cross Appellants Mallinckrodt, Inc. and Nellcor Puritan Bennett, Inc.	
	110	Nellcor's Response to Masimo's First Set of Interrogatories in the Consolidated Case to Mallinckrodt Inc. and Nellcor Puritan Bennett, Inc. (Nos. 1-8), dated 8/23/02.	
	111	Nellcor's Supplemental Response to Masimo's First Set of Interrogatories in the Consolidated Case (No. 2), dated 6/24/03.	
	112	Nellcor's Revised and Corrected Supplemental Response to Masimo's First Set of Interrogatories in the Consolidated Case (No. 2), dated 6/25/03.	
	113	Service Manual: Nellcor -100 Pulse Oximeter, 5 button model, Copyright 1993.	
	114	J. Corenman Computation Notebook, marked 06/23/82 - 06/22/83.	
	115	B. Widrow & S. Stearns, "Adaptive Signal Processing," Prentice-Hall, Copyright 1985.	
	116	N-100 Source Code, Copyright 1983-86.	
	117	N-100, Source Code, Copyright 1976-87.	
	118	"Welcome to the World of Nellcor Pulse Oximetry," Nellcor brochure, in 16 pages, undated.	
	119	"Oximax, Sensor Conversion Step," Nellcor brochure, copyright 1997.	
	120	"Motion-tolerant SpO <sub>2</sub> ," Philips brochure, undated.	
	121	"Introducing New Hand-Held Digital Pulse Oximeter and Sensor with Patented Technologies," Philips, printed from internet site "http://www.oximetersonline.com", 1 page.	
✓	122	"Novamatrix Announces FDA Clearance of New Pulse Oximeter," 2-Mar-2000 Press release in 2 pages.	

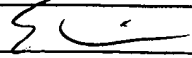
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<b>INFORMATION DISCLOSURE STATEMENT BY APPLICANT</b>  <i>(Multiple sheets used when necessary)</i>	Application No.	09/195,791
	Filing Date	November 17, 1998
	First Named Inventor	Mohamed K. Diab
	Art Unit	3736
SHEET 7 OF 14	Examiner	Eric F. Winakur
	Attorney Docket No.	MASIMO.7CP1C5

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2	123	"Detax-Ohmeda Announces New Products at the American Society of Anesthesiologist, New Orleans," downloaded from internet in 3 pages.	
	124	"OSI Systems Announces FDA 510k Approval of First All Digital Pulse Oximeter Monitor," showing date of 4/23/01 in 2 pages.	
	125	Alaris Medical Systems, "Summary of Safety and Effectiveness" in 3 pages.	
	126	Letter to Alaris Medical Systems from Dept. of Health & Human Services, showing date of 9/11/02 in 3 pages.	
	127	BCI 510(k) FDA Submission 2000-2002.	
	128	Datex-Ohmeda 510(k) FDA Submission 2000-2002.	
	129	Dolphin 510(k) FDA Submission 2002.	
	130	Fukuda Denshi 510(k) FDA Submission 2001.	
	131	Nellcor Puritan Bennett 510(k) FDA Submission 1999-2002.	
	132	Nonin Medical 510(k) FDA Submission 2000.	
	133	OSI Medical 510(k) FDA Submission 2001.	
	134	Siemens Medical 510(k) FDA Submissions 2002.	
	135	SIMS BCI, Inc. 510(k) FDA Submissions 2001.	
	136	"Nellcor's Next Great Move Undated, Pulse Oximetry with ECG Synchronization . . . for Reduced Artifact," undated."	
	137	Operator's Manual, Nellcor N-200 Pulse Oximeter, Copyright 1987.	
	138	C. Baker; "Design Summary and Evaluation of Saturation Arbitrator," undated.	
	139	C. Baker & T. Yorkey, "Two Wavelength Saturation Algorithms," dated 09/14/94.	
	140	N-200 Oximeter Summary Sheets, Design History Records, dated 07/87-10/87.	
2	141	PcSat Source Code.	

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↙	142	Directory listing and source code for Decsub, dated 1991-92.	
	143	Nellcor engineering order #1104 re N-100 C/D program assy, listing a date of 03/03/86.	
	144	Arye Nehorai, "A Minimal Parameter Adaptive Notch Filter With Constrained Poles and Zeros," IEEE Transactions on Acoustics, Speech and Signal Processing, Vol. ASSP-22 No. 4, August 1985.	
	145	Nehorai, Arye, "Adaptive Comb Filtering for Harmonic Signal Enhancement," IEEE Transaction of Acoustics, Speech and Signal Processing, October 1986.	
	146	Hendry, S.D., "Computation of Harmonic Comb Filter Weights," IEEE Transactions on Signal Processing, April 1993.	
	147	C. Baker & T. Yorkey, "O4 Summary" Nellcor, listing a date of 08/05/94.	
	148	M. Jopling, P. Mannheimer & D. Bebout; "Issues In The Laboratory Evaluation Of Pulse Oximeter Performance"; Anesthesia & Analgesia, Vol. 94, Copyright 2001.	
	149	Nellcor Engineering Order, listing date of 03/15/89.	
	150	Nellcor's Sales & Shipment Records 3/89 to 3/90.	
	151	C. Baker and T. Yorkey, "O4 Two Wavelength Saturation Algorithms," listing date of 09/14/94.	
	152	Declaration of Clark R. Baker, dated 08/15/00.	
	153	Declaration of Thomas J. Yorkey, dated 08/20/00.	
	154	P. Mannheimer and D. Bebout, "A Critical Review of Motion in Pulse Oximetry," undated.	
	155	Tobin, Pologe and Batchelder, "A Characterization of Motion Affecting Pulse Oximetry in 350 Patients," Anesthesia & Analgesia, Vol. 94, Copyright 2001.	
	156	R. Brown and P. Hwang, "Introduction to Random Signals and Applied Kalman Filtering," 2nd Ed., John Wiley & Sons, Inc., New York, Copyright 1992.	
	157	IEEE 100, "The Authoritative Dictionary of IEEE Standards Terms," 7th ed., IEEE Press Publications, Copyright 2000.	
Σ	158	Haykin, S., "Adaptive Filter Theory," 1st ed., Prentice-Hall, Inc., 1986.	
	159	<del>Haykin, S., "Adaptive Filter Theory," 2d ed., Prentice-Hall, Inc., 1991.</del>	
Σ	160	Clark R. Baker and Thomas J. Yorkey, "Calculation of Pulse Rate in Pulse Oximetry," dated 10/4/93.	

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Σ	161	Clark R. Baker and Thomas J. Yorkey, "A Proposal for PostProcessing and Display for O4 Saturation and Pulse-Rate Algorithms," dated 10/4/93.	
	162	Description of PCSat; dated 10/16/91.	
	163	Corresponding Source Code.	
	164	Pulse Oximetry The Next Generation, dated 12/07/92.	
	165	Flewelling, Ross, "Oximetry Technology: Strategies for New Development," listing date of 2/95.	
	166	"Safety Monitoring in the Regular Inpatient Care Area – National Sales Meeting," listing date of 1992.	
	167	Swedlow, "Pulse Oximetry," undated.	
	168	Five Generations of Nellcor Oximetry, undated.	
	169	Letter from T. Ulatowski (FDA) to G. To (Nellcor Puritan Bennett, Inc.) with Nellcor 510(K) enclosures, dated 09/24/02.	
	170	"Technology Development Projects," December 1991.	
	171	Next Generation Oximeter Handwritten notes.	
	172	Yorky, T., "Signal Processing Technology Development Projects - Fall 92," listing date of 11/05/92.	
	173	Yorky, T., "Multiple Time Samples in Pulse Oximetry," listing date of 10/14/92.	
	174	"Potential Areas for New Technology Development – Nellcor – 1992," listing date of 09/01/92.	
	175	Source Code.	
	176	Carleton, Penny M., et al. "Assessment of Effectiveness of Flexible Monitoring System for Non-ICU Transitional Patients, 1998.	
	177	M. Jopling, P. Mannheimer & D. Bebout, "Issues in the Laboratory Evaluation of Pulse Oximeter Performance," STA-ISLAPO Meeting Supplement, pp. S62-S68, Copyright 2001.	
	178	N-595 Combined motion and low perfusion study, undated.	
Σ	179	Saturation Arcana.	

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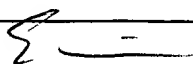
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	180	Memo from C. Baker to T. Yorkey re: "Pulse Oximetry Next Generation (PONG)," dated 12/07/92.	
	181	T. Yorkey Computation Book, listing dates of 03/12/93 - 11/05/94.	
	182	Sayed et al., "A State-Space Approach To Adaptive RLS Filtering," IEEE Signal Processing Magazine, July 1994.	
	183	Nellcor brochure for N-395 Pulse Oximeter with Oxismart XL and SatSeconds, undated.	
	184	N-395 Pulse Oximeter Brochure, undated.	
	185	OxiMax N595 Pulse Oximeter Service Manual, undated.	
	186	O4 Software 1994 Technology Devel. Dept., listing date of 10/4/94.	
	187	Barker S, "Motion Resistant Pulse Oximetry: Comparison of New and Old Models," Anesthesia and Analgesia, 2002; 95: 967-972.	
	188	Barker SJ, Shah NK, "The Effects of Motion on the Performance of Pulse Oximeters in Volunteers," Anesthesiology, 1997; 86(1): 101-108.	
	189	OEM 601 Module-Dolphin ONE Products, undated.	
	190	Dolphin Medical Integration Manual, OEM-601 Module, listing date of 12/16/02.	
	191	Datex - Ohmeda News Flash - TruTrak+ technology provides improved SpO2 readings during clinical patient motion, dated 10/16/02.	
	192	Novamatrix Pulse Oximetry Program; Presented to Sisters of St. Joseph of Orange, undated.	
	193	"Motion-tolerant SpO2 with maximum choice," Philips, undated.	
	194	"Probe," Agilent Technologies, Winter 2001.	
	195	"CMS 2002 Acute Care Patient Monitoring System," Philips, undated.	
	196	Viridia CMS 2000 Product Information, Agilent, New SpO2 Algorithm, undated.	
	197	Richard G. Aseltine, Jr., Siegfried Kaestle, Ph.D. and Rolf Neumann, "New Motion Resistant SpO2-Algorithm by Frequency Domain Signal Analysis," Agilent Technologies, undated.	
	198	510(k) Notification; Infinity MicroO2 + Pulse Oximeter, dated 7/23/02.	

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

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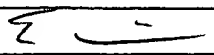
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

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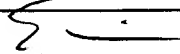
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	199	Tremper KK, Barker SJ., "Pulse Oximetry," Anesthesiology 1989:70:98-108.	
	200	Baker and Yorkey, Nellcor O4 Algorithm Summary, undated.	
	201	Letter to FDA re 510(k) N-200 Labeling Modification, dated 9/23/02.	
	202	Baker, O4 Software Technology Development Department, listing date of 1994.	
	203	IEEE Transactions on Acoustics, Speech, and Signal Processing, dated 04/83.	
	204	Alan S. Willsky, "Digital Signal Processing and Control and Estimation Theory: Points of Tangency, Areas of Intersection, and Parallel Directions," dated 1979.	
	205	Nellcor Requirements, Marketing Product, MP 404, listing date of 08/22/95.	
	206	Flexible Monitoring Clinical Environment, listing date of 1992.	
	207	Trial Transcript in <i>Masimo Corporation v. Mallinckrodt, Inc., et al</i> , CV 99-1245-AHS, 9/25/00 (Pgs 1-50).	
	208	Trial Transcript in <i>Mallinckrodt, Inc., et al v. Masimo Corporation</i> , CV 00-6506 MRP, 2/18/04 (Pgs 1-111).	
	209	Trial Transcript in <i>Mallinckrodt, Inc., et al v. Masimo Corporation</i> , CV 00-6506 MRP, 2/19/04 (Pgs 112-235).	
	210	Trial Transcript in <i>Mallinckrodt, Inc., et al v. Masimo Corporation</i> , CV 00-6506 MRP, 2/20/04 (Pgs 237-320).	
	211	Trial Transcript in <i>Mallinckrodt, Inc., et al v. Masimo Corporation</i> , CV 00-6506 MRP, 2/23/04 (Pgs 427-625).	
	212	Trial Transcript in <i>Mallinckrodt, Inc., et al v. Masimo Corporation</i> , CV 00-6506 MRP, 2/24/04 (Pgs 626-806).	
	213	Trial Transcript in <i>Mallinckrodt, Inc., et al v. Masimo Corporation</i> , CV 00-6506 MRP, 2/25/04 (Pgs 807-902).	
	214	Trial Transcript in <i>Mallinckrodt, Inc., et al v. Masimo Corporation</i> , CV 00-6506 MRP, 2/26/04 (Pgs 943-1128).	
	215	Trial Transcript in <i>Mallinckrodt, Inc., et al v. Masimo Corporation</i> , CV 00-6506 MRP, 2/27/04 (Pgs 1214-1281).	
	216	Trial Transcript in <i>Mallinckrodt, Inc., et al v. Masimo Corporation</i> , CV 00-6506 MRP, 3/1/04 (Pgs 1282-1469).	
	217	Trial Transcript in <i>Mallinckrodt, Inc., et al v. Masimo Corporation</i> , CV 00-6506 MRP, 3/2/04 (Pgs 1470-1617).	

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	218	Trial Transcript in <i>Mallinckrodt, Inc., et al v. Masimo Corporation</i> , CV 00-6506 MRP, 3/3/04 (Pgs 1618-1795).	
	219	Trial Transcript in <i>Mallinckrodt, Inc., et al v. Masimo Corporation</i> , CV 00-6506 MRP, 3/4/04 (Pgs 1796-1986).	
	220	Trial Transcript in <i>Mallinckrodt, Inc., et al v. Masimo Corporation</i> , CV 00-6506 MRP, 3/5/04 (Pgs 1987-2145).	
	221	Trial Transcript in <i>Mallinckrodt, Inc., et al v. Masimo Corporation</i> , CV 00-6506 MRP, 3/8/04 (Pgs 2146-2346).	
	222	Trial Transcript in <i>Mallinckrodt, Inc., et al v. Masimo Corporation</i> , CV 00-6506 MRP, 3/9/04 (Pgs 2347-2528).	
	223	Trial Transcript in <i>Mallinckrodt, Inc., et al v. Masimo Corporation</i> , CV 00-6506 MRP, 3/10/04 (Pgs 2529-2663).	
	224	Trial Transcript in <i>Mallinckrodt, Inc., et al v. Masimo Corporation</i> , CV 00-6506 MRP, 3/11/04 (Pgs 2664-2801).	
	225	Trial Transcript in <i>Mallinckrodt, Inc., et al v. Masimo Corporation</i> , CV 00-6506 MRP, 3/15/04 (Pgs 2802-2860).	
	226	Trial Transcript in <i>Mallinckrodt, Inc., et al v. Masimo Corporation</i> , CV 00-6506 MRP, 3/16/04 (Pgs 2861-3036).	
	227	Trial Transcript in <i>Mallinckrodt, Inc., et al v. Masimo Corporation</i> , CV 00-6506 MRP, 3/17/04 (Pgs 3037-3244).	
	228	Trial Transcript in <i>Mallinckrodt, Inc., et al v. Masimo Corporation</i> , CV 00-6506 MRP, 3/18/04 (Pgs 3245-3416).	
	229	Trial Transcript in <i>Mallinckrodt, Inc., et al v. Masimo Corporation</i> , CV 00-6506 MRP, 3/19/04 (Pgs 3417-3515).	
	230	Trial Transcript in <i>Mallinckrodt, Inc., et al v. Masimo Corporation</i> , CV 00-6506 MRP, 3/22/04 (Pgs 3603-3715).	
	231	Trial Transcript in <i>Mallinckrodt, Inc., et al v. Masimo Corporation</i> , CV 00-6506 MRP, 3/23/04 (Pgs 3716-3828).	
	232	Trial Transcript in <i>Mallinckrodt, Inc., et al v. Masimo Corporation</i> , CV 00-6506 MRP, 3/24/04 (Pgs 3829-3983).	
	233	Trial Transcript in <i>Mallinckrodt, Inc., et al v. Masimo Corporation</i> , CV 00-6506 MRP, 3/25/04 (Pgs 3984-4054).	
	234	Hearing Transcript in <i>Mallinckrodt, Inc., et al v. Masimo Corporation</i> , CV 00-6506 MRP, 12/16/02-12/17/02.	
	235	Hearing Transcript in <i>Mallinckrodt, Inc., et al v. Masimo Corporation</i> , CV 00-6506 MRP, 6/18/04.	
	236	Blitt, M.D., Casey D., "Monitoring in Anesthesia and Critical Care Medicine," Monitoring and Patient Safety," Second Edition, Chapter 4, pp. 33-48, 1990.	

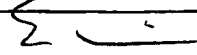
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	<del>237</del>	<del>Widrow, B., "Adaptive Signal Processing," Prentice Hall, Englewood, NJ, 1986.</del>	
2	238	Yelderman, M., et al. "ECG Enhancement by Adaptive Cancellation of Electrosurgical Interference," IEEE Transactions on Biomedical Engineering, Vol. BME-30 No. 7, July 1983.	
	239	Rearden, Jr., R.S., et al., "Biomedical Sciences Instrumentation," Some Digital Signal Processing Methods for Detecting Fat Particles in Blood," Vol. 12, pp. 47-50, 1976.	
	240	"Nellcor N-100 And N-10 Pulse Oximeters, Plus Interchangeable Sensors," undated.	
	241	"Nellcor Redefines Pulse Oximetry. Introducing the Nellcor N-200 with ECG Synchronization," undated.	
	242	W. Byrne, P. Flynn, R. Zapp & M. Siegel, "Adaptive Filter Processing in Microwave Remote Heart Monitors," IEEE Transactions on Biomedical Engineering, Vol. BME-33, No. 7, pp.717-726, 07/1986.	
	243	J. Giolma, "Defining Respiratory Epochs Using an Adaptive AR Filter," ISA Paper #89-0236, pp. 227-232, 1989.	
	244	R. Jane, P. Laguna, P. Caminal & H. Rix, "Adaptive Filtering of High-Resolution ECG Signals," IEEE Proceedings, Computers In Cardiology, pp. 347-350, 09/23-26/90.	
	245	T. Kao, K. Wu, B. Yu & J. Hung, "Digital Signal Enhancement of the Abdominal Fetal ECG," IEEE Engineering in Medicine & Biology Society 11th Annual Int'l Conf., 1989.	
	246	P. Hamilton & W. Tompkins, "Adaptive Matched Filtering for QRS Detection," IEEE Engineering in Medicine & Biology Society 10th Annual Int'l Conf., 1988.	
	247	Y. Park, B. Cho, N. Kim, W. Kim S. Park & D. Youn, "A Fetal ECG Signal Monitoring System Using Digital Signal Processor," ISCAS'88, pp. 2391-2394, 1988.	
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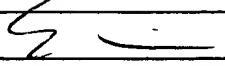
Examiner Signature 	Date Considered 9/14/05
<p>*Examiner: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.</p>	

T<sup>1</sup> - Place a check mark in this area when an English language Translation is attached.

<b>INFORMATION DISCLOSURE STATEMENT BY APPLICANT</b>	Application No.	09/195,791
	Filing Date	November 17, 1998
	First Named Inventor	Mohamed K. Diab
	Art Unit	3736
(Multiple sheets used when necessary)	Examiner	Eric F. Winakur
SHEET 14 OF 14	Attorney Docket No.	MASIMO.7CP1C5

NON PATENT LITERATURE DOCUMENTS			
Examiner Initials	Cite No.	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T <sup>1</sup>
	256	D.P. Brown, "Evaluation of Pulse Oximeters using Theoretical Models and Experimental Studies," University of Washington, November 24, 1987.	

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Examiner Signature 	Date Considered 9/14/05
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## INFORMATION DISCLOSURE

## STATEMENT BY APPLICANT

(Multiple sheets used when necessary)

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SHEET 1 OF 1

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## U.S. PATENT DOCUMENTS

Examiner Initials	Cite No.	Document Number Number - Kind Code (if known) Example: 1,234,567 B1	Publication Date MM-DD-YYYY	Name of Patentee or Applicant	Pages, Columns, Lines Where Relevant Passages or Relevant Figures Appear

## FOREIGN PATENT DOCUMENTS

Examiner Initials	Cite No.	Foreign Patent Document Country Code-Number-Kind Code Example: JP 1234567 A1	Publication Date MM-DD-YYYY	Name of Patentee or Applicant	Pages, Columns, Lines Where Relevant Passages or Relevant Figures Appear	T <sup>1</sup>

## NON PATENT LITERATURE DOCUMENTS

Examiner Initials	Cite No.	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T <sup>1</sup>
h	1	Supplemental Response to Plaintiff Masimo's First Set of Interrogatories to Defendant Mallinckrodt Inc. Pursuant to FED.R.CIV.P.26(e).	
	2	Nellcor's Second Supplemental Response to Masimo's First Set of Interrogatories in Consolidated Case (No. 2), dated 7/14/03.	
	3	Addendum to Nellcor's Second Supplemental Response to Masimo's First Set of Interrogatories in the Consolidated Case (No. 2), dated 7/15/03.	
	4	Second Addendum to Nellcor's Second Supplemental Response to Masimo's First Set of Interrogatories in the Consolidated Case (No. 2), dated 8/10/03.	
	5	Third Addendum to Nellcor's Second Supplemental Response to Masimo's First Set of Interrogatories in the Consolidated Case (No. 2), dated 8/13/03.	
Σ	6	Nellcor's October 13, 2003 Supplemental and Revised Response to Masimo's First Set of Interrogatories in the Consolidated Case (No. 2), dated 10/13/03.	

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Examiner Signature

Date Considered

9/14/05

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